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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/940,203 08/27/01 WINCHESTER

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EXAMINER

PM82/1005

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SUITE 440
50 PENN PLACE
OKLAHOMA CITY OK 73118

ART UNIT	PAPER NUMBER
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3634

DATE MAILED:

10/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/940,208

Applicant(s)
R. Winchester

Examiner
Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 12 and 14 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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It should first be noted that the affidavits submitted with the application have been considered in preparing this Office action.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the legal phraseology such as "means" on line 2 should be deleted. In addition, recitations such as "[t]he present invention relates to" on line 1 can be easily implied and therefore should be deleted. On line 6, "of a defining upright" is grammatically awkward and confusing. Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to include the uprights. See claim 1.

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Claim Objections

Claims 12 and 14 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to the claims from which it depends in the alternative only. See MPEP § 608.01(n) and 37 CFR 1.75. Accordingly, the claims 12 and 14 not been further treated on the merits.

Claim Rejections - 35 USC § 112

Claims 1-11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “thereon on one fixed interval” on line 4 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. Recitations such as “construction members” on line 6 of claim 1 render the claims indefinite because it is unclear if the framing member and the construction members are one in the same or if they are different. Recitations such as “fixed intervals” on line 7 of claim 1 render the claims indefinite because it is unclear how the construction members can be spaced apart at fixed intervals when the stripping has only one interval. Recitations such as “any weather condition” on line 7 of claim 1 render the claims indefinite since it is unclear how the stripping can be used in a blizzard or a hurricane. Recitations such as “the spacing” on lines 7-8 of claim 1 render the claims indefinite because it is unclear which element(s) of the invention have the spacing the applicant is referring to.

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Recitations such as "the construction element" on lines 8-9 of claim 1 render the claims indefinite because it is unclear which one of the plurality of construction elements set forth above the applicant is referring to. Recitations such as "easy" on line 2 of claim 2 render the claims indefinite because they are relative terms whose meaning cannot be readily ascertained by one with ordinary skill in the art and is not defined in the specification. It is suggested that the applicant changed "that provide an easy means to allow" on lines 1-2 of claim 2 to --which enable-- to avoid confusion. Recitations such as "means" on line 2 of claim 2 render the claims indefinite because the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Recitations such as "or" on line 2 of claim 11 render the claims indefinite because it is unclear which one of the non-equivalent alternatives the applicant is positively setting forth. Recitations such as "the appropriate partitions" on line 3 of claim 13 render the claims indefinite because they lack antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sobjack.

Sobjack discloses a construction layout stripping comprising a pliable, non-elastic elongated base 12, repeating units disposed on the base 12, the repeating units having a plurality of pairs of uprights 26 thereon on one fixed interval, each pair of uprights 26 defining a partition for receiving a specified size of framing member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sobjack as applied to claims 1, 6 and 10 above, and further in view of Hanson. Hanson discloses a construction stripping 16 comprising base cutting ribs 22.

It would have been obvious to one of ordinary skill in the art to provide Sobjack with cutting ribs, as taught by Hanson, to more securely grip the trusses.

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Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sobjack as applied to claims 1, 6 and 10 above, and further in view of Lambelet. Lambelet disclose a strip comprising two layers, an elastic layer 5 and a non-elastic layer 4 which are bonded together.

It would have been obvious to one of ordinary skill in the art to provide Sobjack with a two layer construction, as taught by Lambelet, to more securely attach the layout stripping.

Claims 7-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sobjack as applied to claims 1, 6 and 10 above, and further in view of Grzyb. Sobjack is silent concerning the specific spacing of the partitions of the repeating units and the color thereof.

However, Grzyb, in figure 5, discloses a construction layout stripping comprising a first mark 12, a second mark 14 having a center which is 16" from the center of the first mark, a third mark 54 having a center which is 8" from the center of the second mark, a fourth mark 15 having a center which is 8" from the center of the third mark, wherein each spacing interval has a different color.

It would have been obvious to one of ordinary skill in the art to provide Sobjack with a spacing and a coloring, as taught by Grzyb, to increase the number of uses of the layout stripping.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sobjack as applied to claims 1, 6 and 10 above. The use of the apparatus of Sobjack, as set forth above, would inherently lead to the method steps of claim 13.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ward, Sipe, Smith, Currie, Soderberg, Kingston et al., Sykes, Kamykowski, Fields, Jimenez, Dreiling, Rodgers, May, Salato, Werder, and Thomas are cited for disclosing a layout mechanism for spacing construction materials apart before assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is (703) 305-3979. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M. The fax phone number for this Group is (703) 305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
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